IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1884 OF 1999

Scan Organics Ltd.,& Anr. ...Petitioners.
Versus
1.State of Maharashtra &
2.The Vysya Bank Leasing Ltd., ...Respondents.

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Mr.V.K.Wasnik, Advocate for the Petitioners.
Mr.R.Y.Mirza, APP for the State-Respondent No.1.
Mr.H.Rahman i/b M/s. Kini & Co. for Respondent No.2-Original Complainant.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : JULY 31, 2006.

P.C.:

1. Heard the learned Advocate for the petitioners, the learned Advocate for Respondent No.2-original complainant, and learned APP for the State-Respondent No.1.

2. The petitioners in this petition are facing prosecution in Criminal Case No.404-S/98 pending before the learned Addl.Chief Metropolitan Magistrate, 7th Court, Dadar, Mumbai; The said case is under Section 138 of the Negotiable Instruments Act.

3. The petitioners case is that as winding up petitions have been preferred in respect of the company, the petitioners could not make any payment and any such payment made by them would amount to disposition of the property of the company within the meaning of Section 526(2) of the Companies Act and hence, would be void. One of the directors of **Orkay Industries**, has filed petition before this Court raising the very same contentions, as has been raised by the present petitioners. In this case, the Division Bench of this Court held as follows :

> . "We see no conflict between section 138 of the Negotiable Instruments Act and Section 536(2) read with Section 441(2) of the Companies Act. As stated above, the two operate in separate fields. In any case, as stated above, the offence is complete on the 15th day after receipt of the

> notice by virtue of non-payment and if during that period there was no voidness then a subsequent order of winding up has no effect on the offence which has already been committed."

. The above judgment has been challenged in Appeal before the Supreme Court by one of the Directors of Orkay Industries Ltd., Mr.Pankaj Mehra by filing a SLP.

. In the said SLP the said questions raised and the questions raised in the present matter, are the same. The said SLP has been disposed of and the decision is reported in **AIR 2000 S.C. 1953 : AIR SCW 2000 991 (Pankaj Mehra Vs. State of Maharashtra).** In the said decision the view taken by this Court has been upheld.

4. Moreover it may be stated that the petitioners had also filed Writ Petition No.1883 of 1999 before this Court, wherein the facts were

the same as in the present Petitions. By order dated 22nd June, 2005 this Court has observed that no case for interference is made out and the petition came to be dismissed.

5. In view of the above, no case is made out to entertain the present Petition. Hence, the Writ Petition is disposed of. Interim stay granted earlier stands vacated.

(SMT.V.K.TAHILRAMANI,J.)